

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 62521-7-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
BRENDA STEWART,)	UNPUBLISHED OPINION
)	
Appellant,)	FILED: October 5, 2009
_____)	

AGID, J.—Brenda Stewart pleaded guilty to criminal trespass in the first degree and attempted theft in the second degree. As part of her plea agreement, Stewart agreed to pay restitution for damages to the building caused by burglary and any unrecovered property. At the restitution hearing, the trial court ordered Stewart to pay restitution of \$2,125. On appeal, Stewart asserts that because the only unrecovered property was from uncharged crimes, the trial court abused its discretion by imposing restitution for those crimes without an agreement. Stewart also contends that the trial court abused its discretion in setting the amount of restitution because there was insufficient evidence to show that Stewart and her codefendants were working together when they took materials from the building on previous occasions. We accept the

State's concession that there was insufficient evidence in the record to support the order requiring Stewart to pay for the materials her codefendants admitted taking, but conclude that the trial court did not abuse its discretion in ordering Stewart to pay restitution. Because Stewart admitted removing approximately \$500 worth of wiring and salvage materials, we remand to the trial court to enter a restitution order in the amount of \$500.

FACTS

On January 1, 2008, police officers responding to a 911 call entered a vacant building in Seattle that was being demolished. The officers saw three people in the building, including Brenda Stewart, who were cutting and stripping wires in electrical boxes. After her arrest, Stewart admitted she had unlawfully entered the building at least four times and removed approximately 200 pounds of wiring and salvage materials.

One of Stewart's codefendants admitted entering the building approximately four to five times and said he removed approximately 500 pounds of wiring. The other codefendant stated he had entered the building three times and removed approximately 150 pounds of material from the building. The certification for determination of probable cause included an estimate from Tacoma Metals stating the materials were worth approximately \$2.50 per pound.

The State charged Stewart with burglary in the second degree. Stewart pleaded guilty to reduced charges of criminal trespass in the first degree and attempted theft in the second degree. As part of the plea agreement, Stewart stipulated to the facts set

forth in the certification for determination of probable cause. Stewart also agreed to pay restitution “for damages to building caused by burglary & any unrecovered property.”

The court sentenced Stewart to a 24 month deferred sentence and 24 months of probation and ordered her to pay restitution to be determined at a later hearing.

At the restitution hearing, the State argued that because the three defendants admitted stealing 850 pounds of scrap metal and the value of the metal was \$2.50 per pound, Stewart’s joint and several liability with the other defendants was \$2,125. Stewart argued that there was no evidence of missing property from the January 8 charge, she had not agreed to pay restitution for uncharged offenses, and the restitution should be zero. In the alternative, because Stewart had admitted taking 200 pounds of wiring and the value was \$2.50 per pound, Stewart asserted that her liability was \$500. The court ordered Stewart to pay \$2,125 in restitution.

Stewart appeals the restitution order.

DISCUSSION

Stewart asserts that because the only unrecovered property was from uncharged crimes, the trial court abused its discretion by imposing restitution for those crimes without an agreement.

A trial court’s authority to impose restitution is statutory.¹ The trial court has discretion to impose restitution, and we will not disturb the order on appeal absent abuse of discretion.² The court abuses its discretion if its decision is “manifestly

¹ State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008).

² State v. Enstone, 137 Wn.2d 675, 679, 974 P.2d 828 (1999).

unreasonable, or exercised on untenable grounds, or for untenable reasons.”³

The general rule is that “the award of restitution must be based on a causal relationship between the offense charged and proved and the victim’s losses or damages. A defendant may not be required to pay restitution beyond the crime charged or for other uncharged offenses.”⁴ Where the defendant pleads guilty and expressly agrees to pay restitution for crimes for which the defendant was not convicted, she may be ordered to do so.⁵

Under RCW 9.95.210, in addition to a suspended sentence or probation, a trial court may require the defendant to pay restitution to anyone who suffered loss as a result of the crime. If the offender pleads guilty to a lesser included offense and agrees to pay restitution, the court may impose restitution for uncharged crimes.

The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary . . . to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor’s recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.⁶

Here, as part of the plea agreement, Stewart agreed to pay restitution “for damages to building caused by burglary & any unrecovered property.” By agreeing to pay restitution for “damages . . . caused by burglary,” the plea agreement goes beyond reduced charges of criminal trespass in the first degree and attempted theft in the

³ State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

⁴ State v. Woods, 90 Wn. App. 904, 908, 953 P.2d 834 (quoting State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993)), review denied, 136 Wn.2d 1021 (1998).

⁵ State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993).

⁶ RCW 9.95.210(2)(b).

second degree. In addition, the only unrecovered property was the wire and salvage materials Stewart admitted she took when she entered the building previously.

Because Stewart expressly agreed to pay restitution for an offense not prosecuted pursuant to the plea agreement, we conclude that the trial court did not abuse its discretion in requiring Stewart to pay restitution.

Stewart also contends that the trial court abused its discretion in the amount of the restitution order because there was insufficient evidence to show that the codefendants were working together when they took materials from the building on previous occasions. The State concedes that there was insufficient evidence in the record to support the order requiring Stewart to pay for the materials her codefendants admitted taking, but the State asserts that Stewart's admissions support a restitution amount of \$500.

We review the amount of restitution for abuse of discretion. If substantial credible evidence at the restitution hearing supports the restitution order, the trial court did not abuse its discretion.⁷ The State need not prove the restitution order with specific accuracy. It is sufficient if it affords the court a reasonable basis for estimating the loss.⁸ "When restitution is ordered, a trial court determining the amount of restitution may either rely on a defendant's admission or acknowledgment of the amount of restitution or it may determine the amount by a preponderance of evidence."⁹

We accept the State's concession that there is insufficient evidence in the record

⁷ State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51, review denied, 120 Wn.2d 1015 (1992).

⁸ State v. Kisor, 68 Wn. App. 610, 619, 844 P.2d 1038, review denied, 121 Wn.2d 1023 (1993).

⁹ State v. Hunsicker, 129 Wn.2d 554, 558-59, 919 P.2d 79 (1996).

to show that the codefendants were working together when they took materials from the building on previous occasions. We also agree with the State that substantial evidence supports a restitution amount of \$500.

As part of the plea agreement, Stewart stipulated to the facts set forth in the certification for determination of probable cause. Thus, Stewart admitted she had unlawfully entered the building at least four times and removed approximately 200 pounds of wiring and salvage materials. The certification also included Tacoma Metals' estimate that the materials were worth approximately \$2.50 per pound. The trial court was entitled to rely on Stewart's admission that she had removed approximately \$500 worth of materials from the building in ordering restitution.

We remand to the trial court to enter a restitution order of \$500.

Ajd, J.

WE CONCUR:

Becker, J.

Grosse, J